

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
THE COUNTY OF ROANOKE  
FOR  
SUNCREST HEIGHTS STP**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) by the Board to the County of Roanoke, owner of the Suncrest Heights STP, for the purpose of resolving certain violations of environmental law and/or regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183 (you need the whole citation to allow people to confirm the information).
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.
6. “The County” means the County of Roanoke, a political sub-division of the Commonwealth of Virginia.

7. “Suncrest Heights STP” or “the Facility” means the sewage treatment facilities located at the Suncrest Heights subdivision in Roanoke County, Virginia and owned by the County of Roanoke.
8. “WCRO” means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. “Regulations” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
10. “Permit” means VPDES Permit No. VA0028711 to discharge into state waters issued by the Board pursuant to Code § 62.1-44.5 and the Regulations.
11. “Respondent” means the County of Roanoke.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Suncrest Heights STP is permitted under VPDES permit VA0028711. The permit was issued on July 30, 1998 and expired on July 30, 2003.
2. The facility services a sub-development of approximately 25 homes and wastewater is processed through a trickling filter on a dosing schedule.
3. 9 VAC 25-31-100 requires all permittees with a currently effective permit to submit a new complete application at least 180 days before the expiration date of the existing permit. Suncrest Heights was required to submit a complete application by January 30, 2003.
4. Suncrest Heights submitted an application on February 19, 2003 and it was returned as incomplete on March 10, 2003.
5. A Notice of Violation (“NOV”) was issued on May 8, 2003. The NOV cited effluent limit violations for the months of June, August, and December 2002 and January and March 2003. The NOV also cited the failure of the facility to submit a complete application by the January 30, 2003 deadline.
6. On May 20, 2003, Department staff was contacted by Mr. Bob Benninger of Roanoke County. Mr. Benninger stated that the County would be pursuing action to acquire and operate the Suncrest Heights STP. The County intends to connect the Suncrest Height water and sewer operation into the current municipal system. Mr. Benninger anticipates that the Facility could be connected/closed within six to seven months.
7. The Roanoke County Board of Supervisors adopted Ordinance No. O-072203-11 authorizing acquisition of the assets of the Suncrest Water Company and John A. Hall & Associates, Inc. on July 22, 2003. Upon adoption of this ordinance and completion of due diligence with respect to legal title and environmental matters, the County completed the transaction to acquire these assets and operate

the facility effective August 30, 2003.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§62.1-44.15(8a) orders the Respondent, and the Respondent agrees, to perform the following actions:

1. To remedy the violations described above and bring the Facility into compliance, the Respondent shall perform the actions described in Appendix A of this Order.
2. The Respondent shall immediately begin complying with the requirements of Appendix B.
3. The Respondent shall continue to operate and maintain the Facility in a workmanlike fashion and shall address the compliance issues outlined in WCRO's June 2, 2003 inspection report of the Facility, in an expeditious fashion, correcting all said compliance deficiencies no later than six months after the effective date of the Order.
4. The County shall perform the actions ordered in this Special Order by Consent upon approval by the Board of Supervisors of Roanoke County to acquire the assets of Suncrest Water Company and John A. Hall & Associates, Inc. and upon completion of its due diligence investigation.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Respondent, for good cause shown by the Respondent, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the Facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Respondent admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Respondent declares that they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing

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shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.

5. Failure by the Respondent to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Respondent shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Respondent shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Respondent shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which the Respondent intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director, or his designee, and the Respondent. Notwithstanding the foregoing, the Respondent agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until:
  - a. The Respondent petitions the Director or his designee to terminate the Order after it has completed all the requirements of the Order and the Director or his designee approves the termination of the Order, or
  - b. The Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to the Respondent.

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Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Respondent from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By the signature below, the Respondent voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

By: \_\_\_\_\_  
Elmer Hodge, County Administrator  
County of Roanoke

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by Elmer Hodge, County Administrator for the County of Roanoke, on behalf of said County.

Notary Public \_\_\_\_\_

My commission expires: \_\_\_\_\_

#### **APPENDIX A - SCHEDULE OF COMPLIANCE**

- 1) Within twelve months of the effective date of the Order, the Respondent shall either
  - a. connect the Facility to public sewer and cease discharging from the Facility, or
  - b. submit a complete permit application to the Department for issuance of a VPDES permit to the Facility.
- 2) The Respondent shall submit written notification to the Regional Office of the completion of the above referenced action item **within 14 days of completion**. If completion does not occur, submit written notification to WCRO within 14 days of the due date. The notification should include the reason for failing to achieve the deadline, measures taken to expedite completion of the item, and the anticipated date of completion.

## APPENDIX B - OPERATING REQUIREMENTS

In accordance with Paragraph D.2 of this Order, the Respondent shall immediately comply with all of the requirements of this Appendix B. Such requirements shall continue in effect until a VPDES permit is issued for the Facility or the Facility ceases discharging pursuant to the Schedule of Compliance listed in Appendix A.

A. Interim Effluent Limits. Unless otherwise specified in this Order, the effluent limits in Appendix C to this Order will apply until a VPDES permit for the Facility is issued or the Facility ceases discharging pursuant to the Schedule of Compliance listed in Appendix A.

### B. Total Residual Chlorine (TRC) Effluent Limitations and Monitoring Requirements.

1.
  - a. No more than three (3) of all samples for TRC taken after the chlorine contact tank and prior to dechlorination shall be less than 1.0 mg/l for any one calendar month. [DMR Code #157]
  - b. No TRC sample collected prior to dechlorination shall be less than 0.6 mg/l. [DMR Code #213]
  - c. These TRC concentrations may be lowered where the permittee has demonstrated adequate disinfection.
2. The TRC concentration in the final effluent after dechlorination from this facility shall be **non-detectable**. [DMR Code # 165] This TRC concentration shall be measured using one of the following procedures:
  - a. DPD Titration
  - b. DPD Colormetric
  - c. Iodate Back Titration (Starch)
  - d. Amperometric Direct Titration
  - e. Any proven and EPA accepted method that can reach an equal level of detection.
3. When the TRC concentration in the final effluent results in a detectable measurement, the permittee shall take immediate steps to achieve a non-detectable concentration. Where the TRC concentration is within the limit of B.4., the permittee shall also take up to two additional grab samples within one hour of the original sample. The first of these additional samples shall be taken within 45 minutes after the original sample. Should this TRC sample measurement indicate a non-detectable concentration, then the original sample shall be considered as being in compliance with the permit limit in B.2.. Should this TRC sample measurement indicate a detectable concentration within the limit of B.4., then a second additional sample shall be taken within 15 minutes after the first additional sample, but

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within one hour of the original sample.

If the second of these additional sample measurements indicates a non-detectable TRC concentration, then the original and the first additional sample shall be considered as being in compliance with the permit limitation in B.2.. Should this second additional sample measurement indicate a detectable TRC concentration, then the original sample will be considered as exceeding the permit limitation in B.2.. Should more than one sample be collected, only the original sample shall be considered for permit violation.

The permittee shall report all results of the above monitoring scheme with the monthly Discharge Monitoring Report (DMR).

- 4 The instantaneous maximum TRC concentration in the final effluent shall not exceed 1.0 mg/l. [DMR Code #166]
5. The permittee shall operate the dechlorination facilities in a manner which will ensure continuous compliance with the TRC concentration in B.2., but not to the extent that will result in violations of other permitted effluent characteristics, or the Water Quality Standards.

C. Quantification Levels

- a. Quantification Level Goals shall be as follows:

<u>Effluent Characteristic</u>	<u>Quantification Level</u>
Ammonia (mg/l as N)	0.2 mg/l

- b. Monthly Average Limit

Compliance with the monthly average limitations for ammonia shall be determined as follows: All data below the specified quantification level (QL) shall be treated as zero. All data equal to or above the QL shall be treated as it is reported. An arithmetic average shall be calculated using all reported data, including the defined zeros. This arithmetic average shall be reported on the DMR and compared to the monthly average limit for determination of compliance. If all data are less than the QL, an “NQ” shall be reported on the DMR. “NQ” means not quantifiable at the level required by this permit.

- c. Daily Maximum Limit

Compliance with the daily maximum limitations for ammonia shall be determined as



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follows: The highest single value of data that is equal to or above the QL shall be reported on the DMR and compared to the daily maximum limit for determination of compliance. If all data are less than the QL, an “NQ” shall be reported on the DMR. “NQ” means not quantifiable at the level required by this permit.

D. Sampling and Analysis Methods

1. Samples and measurements taken as required by this Order shall be representative of the volume and nature of the monitored activity.
2. All sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR 136).
3. The sampling and analysis program necessary to demonstrate compliance with the effluent limitations shall, at a minimum, conform to Appendix C of this Order.

E. Recording of Results. For each measurement or sample taken pursuant to the requirements of this Order, the Respondent shall record the following information:

1. The date, exact place and time of sampling or measurements;
2. The person(s) who performed the sampling or measurements;
3. The dates analyses were performed;
4. The person(s) who performed each analysis;
5. The analytical techniques or methods used; and
6. The results of such analyses and measurements.

F. Records Retention. All records and information resulting from the monitoring activities required by this Order, including all records of analyses performed and recordings from continuous monitoring instrumentation, shall be retained for three (3) years from the date of the sample or measurement. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the Respondent, or as requested by the Director.

G. Reporting Requirements

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1. The Respondent shall submit to WCRO, at the address listed below by the 10th of each month, for the preceding months' performance, an original Discharge Monitoring Report. In addition, a report covering the Facility's general operational data may be required. If this report is required, the Respondent will be so notified.

Send report to: Department of Environmental Quality  
West Central Regional Office  
3019 Peters Creek Road, N.W.  
Roanoke, Virginia 24019

2. If, for any reason, the Respondent does not comply with one or more limitations, standards, monitoring or management requirements specified in this Order, the Respondent shall submit to WCRO, with the Discharge Monitoring Report at least the following information:

- a. A description and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and
- c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect State waters or may endanger public health, the Respondent shall submit the above required information by oral report within 24 hours from the time the Respondent becomes aware of the event of noncompliance and by written report within five days of the event. The WCRO Director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on State waters has been reported.

3. The Respondent shall report any unauthorized, unusual or extraordinary discharge that enters or could be expected to enter State waters. The Respondent shall provide information specified in Part F.2.a-c. regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours after discovery. A written submission covering these points shall be provided within five days of the time the Respondent becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharges would include, but not be limited to: (1) unplanned bypasses, (2) upsets, (3) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (4) breakdown of processing or accessory equipment, (5) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (6) flooding or other acts of nature.

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This report shall be made to WCRO at (540) 562-6700. For reports outside normal working hours, leaving a message shall fulfill the reporting requirements. For emergencies, the Department maintains a 24-hour telephone service at 1-800-468-8892.

H. Treatment Works Operation and Quality Control

1. Operation of the Facility and disposal of all wastes shall be in a reliable and consistent manner to meet the performance requirements in the Order. If deficiencies are identified in the future which could affect performance or reliability of the Facility, it is the responsibility of the Respondent to correct such deficiencies.

2. The Facility shall be operated in a manner consistent with the following:

a. At all times the Facility shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to State waters.

b. The Respondent shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this Order.

c. Maintenance of the Facility shall be carried out in such a manner that monitoring and/or limitation requirements are not violated.

I. Adverse Impact

The Respondent shall take all feasible steps to minimize any adverse impact to State waters resulting from noncompliance with any limitation(s) and/or conditions specified in this Order, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncompliance with limitation(s) and/or conditions.

J. Duty to Halt, Reduce Activity or to Mitigate

1. It shall not be a defense for the Respondent in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of this Order.

2. The Respondent shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment.

K. Structural Stability

The structural stability of any of the units or parts of the Facility or its associated treatment units is the sole responsibility of the Respondent and the failure of such structural units or parts shall not relieve the Respondent of the responsibility of complying with all terms and conditions of this Order.

L. Bypassing

Any bypass ("Bypass - means intentional diversion of waste streams from any portion of a treatment works") of the Facility is prohibited unless:

1. Anticipated Bypass - If the Respondent knows in advance of the need for a bypass, the Respondent shall notify WCRO promptly at least 10 days prior to the bypass. After considering its adverse effects the WCRO Director may approve an anticipated bypass if:
  - a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.); and
  - b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down-time. However, if a bypass occurs during normal periods of equipment down-time, or preventive maintenance and in the exercise of reasonable engineering judgment the Respondent could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.
2. Unplanned Bypass - If an unplanned bypass occurs, the Respondent shall notify WCRO as soon as possible, but in no case later than 24 hours after the start of the bypass, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraph L below (there is not Part IIIG so I'm not sure what else the permit boilerplate was referring to) and in light of the information reasonably available to the owner at the time of the bypass.

M. Conditions Necessary to Demonstrate an Upset

The Respondent may claim an upset as an affirmative defense to an action brought for noncompliance for only technology- based effluent limitations. In order to establish an affirmative defense of upset, the Respondent shall present properly signed, contemporaneous operating logs or other relevant evidence that show:

1. An upset occurred and that the cause can be identified;

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2. The Facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. The Respondent submitted a notification of noncompliance as required by Part (there is no Part II in this Order)F. above; and
4. The Respondent took all reasonable steps to minimize or correct any adverse impact to State waters resulting from noncompliance with the Order.

N. Compliance With State and Federal Law

Nothing in this Order shall be construed to preclude the institution of any legal action under, or relieve the Respondent from any responsibilities, liabilities, or penalties established pursuant to any other State law or regulation or under authority preserved by Section 510 of the Clean Water Act.

O. Property Rights

The issuance of this Order does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

P. Severability

The provisions of this Order are severable.

Q. Right of Entry

The Respondent shall allow authorized State and Federal representatives, upon the presentation of credentials:

1. To enter upon the Respondent's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) are located or in which any records are required to be kept under the terms and conditions of this Order;
2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this Order;
3. To inspect at reasonable times any monitoring equipment or monitoring method required in this Order;

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4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and
5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this Order.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the Facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

R. Public Access to Information

All information pertaining to Permit processing or in reference to any source of discharge of any pollutant, shall be available to the public, unless the information has been identified by the Respondent as a trade secret, of which the effluent data remain open public information. All information claimed confidential must be identified as such at the time of submission to the Department or EPA. Otherwise, all information will be made available to the public. Notwithstanding the foregoing, any supplemental information that the Department may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

S. Civil and Criminal Liability

Except as provided in Order conditions on "bypassing" (Part .K), and "upset" (Part L) nothing in this Order shall be construed to relieve the Respondent from civil and criminal penalties for noncompliance.

T. Oil and Hazardous Substance Liability

Nothing in this Order shall be construed to preclude the institution of any legal action or relieve the Respondent from any responsibilities, liabilities, or penalties to which the Respondent is or may be subject under Section 311 of the Clean Water Act or Sections 62.1-44.34(those provisions were appealed), *et seq.* of the State Water Control Law.

U. Unauthorized Discharge of Pollutants

Except in compliance with this Order, it shall be unlawful for the Respondent to:

1. Discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or
2. Otherwise alter the physical, chemical or biological properties of such State waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for

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domestic or industrial consumption, or for recreation, or for other uses.

## APPENDIX C - INTERIM EFFLUENT LIMITS

### INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – Suncrest Heights STP

1. As provided for in the Order, the Facility is authorized to discharge from outfall serial number 001. Such discharges shall be limited and monitored at outfall 001 as specified below, from the effective date of this Order until the Facility is taken offline as anticipated in paragraph 1 of Appendix A hereto , or until a VPDES permit is issued for the Facility, as anticipation in paragraph 2 of Appendix A hereto, whichever first occurs.:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATION</u>				<u>MONITORING REQUIREMENTS</u>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD)	NL	NA	NA	NL	1/Day	Estimate
BOD <sub>5</sub>	15 mg/l 1.1 kg/d	22.5 mg/l 1.7 kg/d	NA	NA	1/Month	Grab
Total suspended solids	30 mg/l 2.2 kg/d	45 mg/l 3.4 kg/d	NA	NA	1/Month	Grab
Total Kjeldahl Nitrogen	8.1 mg/l 0.6 kg/d	12.2 mg/l 0.9 kg/d	NA	NA	1/Month	Grab
Ammonia – N <sup>3</sup>	NL	9.5mg/l 0.7 kg/d	NA	NA	1/Month	Grab
Dissolved Oxygen (mg/l)	NA	NA	6.0	NA	1/Day	Grab
Total Residual Chlorine (TRC)	NA	NA	NA	NA	1/Day	Grab
pH (standard units)	NA	NA	6.0	9.0	1/Day	Grab

NL - No limitation, monitoring only;      NA - Not applicable